

CHAPTER NO. 880

HOUSE BILL NO. 2859

By Representatives John DeBerry, Ulysses Jones, Miller, Larry Turner, Bowers, Henri Brooks, Cooper, Lois DeBerry, Langster, Pruitt, Brenda Turner, Briley, Fitzhugh, Shaw, Towns, Marrero, Coleman, Pleasant, Fowlkes, Armstrong, West, Bone, Brown, Kent and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 2689

By Senator Cohen

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 8, relative to wrongful imprisonment.

WHEREAS, in May 1980, Clark McMillan ("McMillan") was convicted in the Shelby County Court of a rape and robbery of a sixteen-year-old girl that occurred on October 26, 1979 in Overton Park; and

WHEREAS, McMillan was sentenced to 119 years in prison; and

WHEREAS, the prosecution presented no physical evidence of McMillan's guilt at his trial; and

WHEREAS, the most significant evidence of McMillan's guilt was problematic identifications by the victim and her boyfriend as the perpetrator; and

WHEREAS, during the investigation of this crime, semen was recovered in the victim's rape kit and on her clothing; and

WHEREAS, forensic DNA testing did not exist at the time of the prosecution and conviction of McMillan; and

WHEREAS, at the time of his conviction, McMillan was twenty-two years old and physically disabled as the result of a spinal injury; and

WHEREAS, in August 2001, the State of Tennessee enacted a law allowing certain inmates access to postconviction DNA testing to support claims of factual innocence; and

WHEREAS, on April 18, 2002, the Tennessee Bureau of Investigation Memphis Crime Laboratory completed the relevant DNA testing, testing that irrefutably excluded McMillan as the source of the semen recovered from the victim; and

WHEREAS, on May 14, 2002, the prosecutor conceded McMillan's actual innocence and joined in his application to vacate the conviction and dismiss the indictment against him; and

WHEREAS, subsequent to McMillan's exoneration, the DNA profile of the semen recovered from the victim was matched to David Louis Boyd, a serial rapist who had been a suspect in other attacks in Overton Park and who is now serving a life prison sentence in Texas for a subsequent aggravated rape that occurred in 1983; and

WHEREAS, the Speaker of the Senate of the 102nd General Assembly of the State of Tennessee, in conjunction with Senator Roscoe Dixon, issued a proclamation recognizing Mr. McMillan for his determination, strength, and optimism; and

WHEREAS, McMillan's sister, father, and grandmother died while he was in prison, and his mother suffered several strokes and lost her home; and

WHEREAS, while incarcerated, McMillan received negligible medical treatment for the preexisting spinal injury and served his time in prison under extreme physical pain and discomfort as his condition deteriorated; and

WHEREAS, as a result of his wrongful conviction, McMillan sustained the following injuries: pain and suffering; severe mental anguish; emotional distress; loss of income; infliction of physical illness; inadequate medical care; humiliation, indignities, and embarrassment; degradation; injury to reputation; permanent loss of natural psychological development; and McMillan also endured restrictions on his liberty and all forms of personal freedom, such as diet, sleep, personal contact, educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and expression; and

WHEREAS, McMillan now resides in Memphis, Tennessee with his wife, Betty, who he met through prison ministries, and he plans to serve in a youth ministry, guiding and encouraging young people to make choices which will lead them to live productive lives; and

WHEREAS, McMillan's exoneration was the first under Tennessee's then-new postconviction DNA testing law; and

WHEREAS, McMillan served twenty-two and a half years for this crime that he did not commit, the second longest prison time served by any of the 140 postconviction DNA exonerations to date nationwide; and

WHEREAS, New York's compensation statute, NY Court of Claims Act § 8-D, has no award cap; and

WHEREAS, Alabama's compensation statute, Al. § 29-2-150-165, provides for compensation in the amount of a minimum of \$50,000 per year of wrongful imprisonment; and

WHEREAS, California's compensation statute, Cal. Penal Code § 4900-4906, provides for compensation in the amount of \$100 per day or \$36,500 per year of wrongful imprisonment; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 9-8-108(a)(7), is amended by deleting the same in its entirety and by substituting instead the following:

Shall hear claims for compensation by persons wrongfully imprisoned and granted exoneration pursuant to § 40-27-109. Any award made by the board pursuant to this subdivision shall be subject to the following conditions:

(A) Compensation payable to such persons shall be determined by the board considering all factors the board considers relevant including, but not limited to, the person's physical and mental suffering and loss of earnings,

provided the maximum aggregate total of such compensation shall not exceed one million dollars (\$1,000,000).

(B) Any amount awarded shall be payable in equal monthly installments until paid in full, unless the person dies prior to receipt of the full amount. The amount of the monthly installments payable hereunder shall be calculated by dividing the non-commuted amount, determined pursuant to subdivision (D) below, by the estimated number of months the claimant will live based upon the claimant's life expectancy at the time of the award as determined from the mortality tables last adopted by the board of trustees of the Tennessee consolidated retirement system pursuant to § 8-34-503.

(C) If the person dies without leaving a surviving spouse or surviving minor children, the payments shall cease. Upon the death of the claimant, any monthly installments left remaining shall be paid to the claimant's surviving spouse and surviving minor children in equal portions. The amount payable to the surviving spouse, if any, shall be paid until the surviving spouse's death or remarriage. If the surviving spouse dies or remarries, then the amount that was payable to the surviving spouse shall be divided equally among the claimant's surviving minor children. Each child shall receive such child's share until reaching majority status or death; whichever occurs first, at which time the amount shall be redistributed equally among the remaining minor children. For purposes of this subdivision, "minor" means any person who has not attained eighteen (18) years of age.

(D) Upon motion of the claimant or in the discretion of the board, all or a portion of the compensation payable monthly hereunder may be commuted to a lump sum payment. In determining whether to commute the compensation, the board shall consider whether there exists special needs warranting such commutation, whether the commutation will be in the best interest of the person and whether that person has the ability to wisely manage and control the commuted award irrespective of whether there exists special needs. The claimant has the burden of proving that a lump sum payment is warranted.

(E) In the event compensation is awarded to a claimant pursuant to this subdivision, the board, at the request of the claimant, may fund on behalf of such claimant an annuity contract to be secured by the claimant; provided that:

(i) Such contract shall only be secured from an insurance company licensed under the laws of the state of Tennessee whose claims paying ability is rated as superior or excellent by at least two (2) nationally recognized rating services;

(ii) The contract, by its terms, cannot be sold, transferred, assigned, discounted or used as security for a loan; and

(iii) The contract provides for survivor benefits.

The cost of any such annuity contract shall be paid from the compensation awarded to the claimant under this subdivision.

(F) Any claim for compensation under this subdivision must be filed with the board no later than one (1) year from the date that the claimant is granted exoneration pursuant to § 40-27-109.

(G) The state of Tennessee shall have a right of subrogation as provided by law for any amount awarded pursuant to this subdivision against any person who willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction and imprisonment of the claimant.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 20, 2004


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 7th day of June 2004


PHIL BREDESEN, GOVERNOR